IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 26318 of 2007(G)

OS.213/2005 of SUB COURT,ATTINGAL
OP.6/2005 of MUNSIFF COURT,ATTINGAL
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PETITIONERS:
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1. **SAROJINI, D/o. VELAYUDHAN, KIZHAKKEKOLLASSERIL VEEDU, VALIYAKADA, CHIRAYANKEEXHU VILLAGE, AND CHIRAYINKEEZHU DESOM.**

2. **SASIKALA, D/o. SAROJINI, ANJANA, KADAKKAVOOR DESOM AND KADAKKAVOOR VILLAGE.**

3. **JAYAPRABHA, D/o. SAROJINI, CHITTADIPURAYIDATHIL, ETHIKKARA, CHATHANNORE DESOM, MEENADU VILLAGE, KOLLAM.**

BY ADV. SRI.ABRAHAM JOHN

RESPONDENTS:
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1. **DIVYA, D/o. SADASIVAN, AGED 30 YEARS, VALIYAKADAPUTHENVEEDU, VALIYAKADA CHIRAYINKEEZHU, KOLLAM.**

2. **DHANYA, D/o. SADASIVAN, AGED 20 YEARS, VALIYAKADA PUTHEN VEEDU, VALIYAKADA CHIRAYINKEEZHU, KOLLAM.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

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W.P.(C).No.26318 of 2007

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Dated this the 4th day of September, 2007

JUDGMENT

This writ petition is filed seeking to set aside the order in I.A.No.2150/2005 in O.S.No.213/2005. The prayer in the petition is to stay the proceedings of O.P.No.6/2005 on the file of the Munsiff Court, Attingal. The contention of the writ petitioners is that they have instituted a suit O.S.No.213/2005 whereby they wanted to get their right declared and if in the meanwhile O.P.No.6/2005 is disposed it would cause prejudice to them. The court below did not find in favour of the writ petitioner and negatived the prayer for a stay of O.P.No.6/2005. The Indian Succession Act envisages the procedure for issuing Succession Certificate and the procedure contemplated is of a summary nature. Under Section 373(3)when intricate question of law or fact is involved the court issuing Succession Certificate is bound to consider whether the petitioner is the person having prima facie the best title there too. If the court is dissatisfied then the court cannot grant an order of succession in that O.P. The intention of the legislature behind ordering a summary procedure is to help the parties to have an immediate result and

not a long drawn civil litigation. There are umpteen number of decisions which holds that the decree of civil court subsequent to that will have binding effect. Therefore, it is not correct to stay the O.P. pending before the learned Munsiff. I am informed that the present writ petitioners are parties before the Munsiff Court and they have got contentions in the case. Since they have approached civil court also for an appropriate relief, the court below namely, the Munsiff Court should see whether after adducing evidence there is a prima facie title there to the applicant there in before granting issuance of a Succession Certificate. It is also true that if the amount is allowed to be withdrawn unconditionally it will cause difficulty if ultimately the present writ petitioners succeed in the civil case. Therefore bearing all these principles in mind at the time of disposal of the O.P., the court below shall take necessary precaution to safeguard the interest of all concerned and pass appropriate orders accordingly.

The writ petition is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs